

10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

D-1 EDWARD CESPEDES,

D-2 JOSEPH DESANTO, and

D-3 GERRI AVERY,

Defendants.

Case: 4:18-cr-20086
Judge: Parker, Linda V.
MJ: Davis, Stephanie Dawkins
Filed: 02-07-2018
SEALED MATTER (dw)

INDICTMENT

The Grand Jury in and for the Eastern District of Michigan charges that:

INTRODUCTION

At all times relevant to this Indictment:

1. Integrated HCS Practice Management ("Integrated Management") was a limited liability company operating in Southfield, Michigan. Integrated Management provided management services to healthcare providers.
2. Defendant EDWARD CESPEDES was a managing partner for Integrated Management and held an ownership interest in the entity. Defendant CESPEDES exercised control over Integrated Management's finances, including, among other ways, by maintaining signature authority over its operating account and controlling its expenditure of funds.

3. Defendant JOSEPH DESANTO worked for Integrated Management and exercised control over Integrated Management's finances and day-to-day operations, including its expenditure of funds.

4. Defendant GERRI AVERY was employed by Integrated Management as an executive assistant. Defendant AVERY held signature authority over the Integrated Management operating account and was responsible for, among other things, issuing checks to pay Integrated Management's expenses.

5. Individual A had the largest ownership interest in Integrated Management, but did not have signature authority over any Integrated Management bank accounts.

6. The Internal Revenue Service ("IRS") was an agency of the United States Department of the Treasury, responsible for administering and enforcing the tax laws of the United States.

Payroll Taxes

7. Employers were required to withhold, truthfully account for, and pay over to the IRS a variety of taxes from employee wages, collectively referred to as "payroll taxes." These taxes include: Federal income tax withholding ("withholding taxes") and Federal Insurance Contribution Act taxes ("FICA taxes"), as more particularly described below:

(a) Withholding taxes: In general, an employer was required to deduct and withhold income tax on the amount of wages that were actually or constructively paid to its employees, and pay over those withholding taxes to the IRS; and

(b) FICA taxes: The FICA tax was comprised of two elements: old-age, survivor and disability insurance, commonly referred to as "Social Security," and health insurance, commonly referred to as "Medicare." Social Security taxes were used to fund

retirement and disability benefits, while Medicare taxes were used to provide health and medical benefits for the aged and disabled. An employer had to deduct FICA taxes on the amount of wages that were actually or constructively paid to its employees, and pay over those FICA taxes to the IRS.

8. To account for Payroll Taxes that had to be paid to the IRS, the Internal Revenue Code required employers to prepare tax forms, including Forms W-2 and W-3, and to file them with the proper government agency.

9. Section 7501 of the United States Code provided that whenever any person was required to withhold or collect any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so withheld or collected was required to be held as a special fund in trust for the United States.

10. The Internal Revenue Code required employers to accurately report to the IRS amounts of employee wages paid, as well as Payroll Taxes due and withheld based on those wages on an Employer's Quarterly Federal Tax Return, Form 941 ("Form 941"). The Form 941 was filed quarterly, and was due one month after the conclusion of each quarter.

11. Any person having authority to exercise significant control over an employer's financial affairs was deemed responsible for collecting, truthfully accounting for, and paying over payroll taxes, regardless of whether the individual exercised such control in fact. More than one person could be considered a "responsible person" for the purpose of collecting, truthfully accounting for, and paying over payroll taxes.

COUNTS 1 to 3

26 U.S.C. § 7202

Failure to Collect, Truthfully Account for, and Pay over Payroll Tax
(Edward Cespedes and Joseph DeSanto)

D-1 EDWARD CESPEDES

D-2 JOSEPH DESANTO

12. The allegations in Paragraphs 1 through 11 of this Indictment are re-alleged as if set forth in full herein.

Failure to Timely Pay Payroll Taxes

13. From in or about February 2013 to in or about February 2014, Integrated Management withheld payroll taxes from its employees' paychecks. However, beginning in or about October 2013, Integrated Management failed to make timely payments of the full amount of payroll taxes due to the IRS.

14. As a managing partner for Integrated Management, Defendant EDWARD CESPEDES was a "responsible person," that is, he had the corporate responsibility to collect, truthfully account for, and pay over Integrated Management's payroll taxes.

15. As a person who exercised control over Integrated Management's finances and day-to-day operations, and controlled its expenditure of funds to pay expenses, Defendant JOSEPH DESANTO was also a "responsible person."

16. From in or about October 2013 to in or about February 2014, Defendants EDWARD CESPEDES and JOSEPH DESANTO directed the payment of over \$1.3 million in Integrated Management funds to cover Integrated Management's operating expenses, as well as their own personal expenses, while at the same time failing to pay over to the IRS payroll

taxes withheld from Integrated Management's employees' paychecks, including, among other examples:

(a) On or about October 18, 2013, Defendants JOSEPH DESANTO and EDWARD CESPEDDES caused Integrated Management to wire \$7,500 to a bank account controlled by Individual A;

(b) On or about November 6, 2013, Defendants JOSEPH DESANTO and EDWARD CESPEDDES caused Integrated Management to wire \$5,000 to a bank account controlled by Individual A;

(c) On or about January 24, 2014, Defendants JOSEPH DESANTO and EDWARD CESPEDDES caused Integrated Management to wire \$10,293 to a bank account controlled by Individual A;

(d) On or about January 17, 2014, Defendants JOSEPH DESANTO and EDWARD CESPEDDES caused Entity A, an entity owned in part by Individual A, to transfer \$100,000 into the Integrated Management operating account, then used those funds to pay Integrated Management operating expenses; and

(e) On or about April 4, 2014, Defendants JOSEPH DESANTO and EDWARD CESPEDDES caused Integrated Management to wire approximately \$28,000 to a bank account controlled by Defendant GERRI AVERY, in the name of Entity B, an entity whose identity is known to the grand jury.

17. On or about May 12, 2014, the IRS sent a letter to Defendant EDWARD CESPEDDES, notifying him he was under civil investigation and was subject to potential personal liability for the Integrated Management's payroll taxes due and owing for the 3rd and 4th quarters of 2013.

18. On or about the dates set forth below, in the Eastern District of Michigan and elsewhere,

EDWARD CESPEDES
and
JOSEPH DESANTO,

the Defendants herein, having a duty to collect, truthfully account for, and pay over to the IRS all payroll taxes due and owing, did willfully fail to collect, truthfully account for, and pay over to the IRS all of the payroll taxes due and owing to the United States on behalf of Integrated Management and their employees, as set forth below, with each of the calendar quarters constituting a separate count of this Indictment:

Count	Quarter and Calendar Year	Quarterly Due Date	Approximate Date Form 941 Received	Approximate Payroll Taxes Reported Due on Form 941
ONE	3rd Quarter 2013	October 31, 2013	December 20, 2013	\$224,711
TWO	4th Quarter 2013	January 31, 2014	January 31, 2014	\$259,874
THREE	1st Quarter 2014	April 30, 2014	October 6, 2014	\$88,532

All in violation of Title 26, United States Code, Section 7202 and Title 18, United States Code, Section 2.

COUNT 4

26 U.S.C. § 7212(a)
Corrupt Endeavor to Obstruct or Impede the
Due Administration of the Internal Revenue Laws
(Gerri Avery)

D-3 GERRI AVERY

19. The allegations in Paragraphs 1 through 16 of this Indictment are re-alleged as if set forth in full herein.

IRS Collection Activity

20. On or about April 12, 2014, the IRS initiated a collections case seeking to recover the past due payroll taxes owed by Integrated Management. As part of its collections efforts, the IRS attempted to determine who the responsible person or persons were with respect to the past due Integrated Management payroll taxes. Defendant GERRI AVERY obstructed the IRS' attempts to collect the past due payroll taxes by concealing Defendant JOSEPH DESANTO's control over Integrated Management's finances and day-to-day operations, including its expenditure of funds, and his responsibility for paying the past due payroll taxes.

21. On or about July 24, 2014, the IRS sent a Letter 3586 to Defendant GERRI AVERY, notifying her that the IRS was attempting to collect on payroll taxes due and owing for Integrated Management for the 3rd and 4th Quarters of 2013 and that she may be considered a "responsible person" for those taxes.

22. On or about August 13, 2014, Defendant GERRI AVERY left a voicemail for the IRS, encouraging the IRS to look at Individual B and Individual C in its attempts to collect the past due payroll taxes.

23. On or about October 15, 2014, the IRS sent a Letter 1153 to Defendant GERRI AVERY, notifying her she was being held personally liable for the Integrated Management payroll taxes due and owing for the 3rd and 4th Quarters of 2013.

24. On or about January 27, 2016, the IRS sent Defendant GERRI AVERY a Letter 1058, Final Notice of Intent to Levy, seeking unpaid payroll taxes for Integrated Management for the 3rd Quarter of 2013 through the 1st Quarter of 2014.

25. From in or about July 2014, to on or about July 20, 2017, in the Eastern District of Michigan and elsewhere,

GERRI AVERY,

the Defendant herein, with knowledge of a pending IRS proceeding, did corruptly endeavor to obstruct and impede the due administration of the Internal Revenue Laws by engaging in the following acts, among others:

On or about March 22, 2016, Defendant GERRI AVERY provided false information, through counsel, to the IRS regarding the collection of the unpaid Integrated Management payroll taxes due and owing, falsely stating, among other things, that:

(a) Integrated Management's payroll taxes due and owing were not paid because the Integrated Management operating account lacked the funds to pay the payroll taxes due and owing;

(b) Individual B, a person whose identity is known to the grand jury, was responsible for providing funds to pay Integrated Management's payroll taxes due and owing;

(c) Defendant JOSEPH DESANTO was not involved in "day to day affairs" of Integrated Management; and

(d) Defendant GERRI AVERY had a limited knowledge of Integrated Management finances.

All in violation of Title 26, United States Code, Section 7212(a).

THIS IS A TRUE BILL

s/GRAND JURY FOREPERSON

Dated: February 7, 2018

s/ROSEMARY E. PAGUNI
ROSEMARY E. PAGUNI
Chief, Northern Criminal Enforcement Section
U.S. Department of Justice, Tax Division

s/MARK MCDONALD
MARK MCDONALD
DOJ Tax Attorney
Northern Criminal Enforcement Section
601 D Street N.W. - Room 7544
Washington D.C. 20004

Companion Case information MUST be completed by AUSA and initialed.United States District Court
Eastern District of Michigan**Criminal Case Cover Sheet | Case Number**

Case: 4:18-cr-20086

Judge: Parker, Linda V.

MJ: Davis, Stephanie Dawkins

Filed: 02-07-2018

SEALED MATTER (dw)

NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to co

Companion Case Information	Companion Case Number:
This may be a companion case based upon LCrR 57.10 (b)(4) ¹ :	Judge Assigned:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	AUSA's Initials: MSM

Case Title: USA v. Edward Cespedes, Joseph DeSanto, Gerri Avery**County where offense occurred :** Genesee County(defendant venue waiver anticipated)**Check One:** ☒ **Felony** ☐ **Misdemeanor** ☐ **Petty**

☒ Indictment/ ☐ Information --- no prior complaint.
☐ Indictment/ ☐ Information --- based upon prior complaint [Case number: _____]
☐ Indictment/ ☐ Information --- based upon LCrR 57.10 (d) [Complete Superseding section below].

Superseding Case Information**Superseding to Case No:** _____ **Judge:** _____

- ☐ Original case was terminated; no additional charges or defendants.
☐ Corrects errors; no additional charges or defendants.
☐ Involves, for plea purposes, different charges or adds counts.
☐ Embraces same subject matter but adds the additional defendants or charges below:

Defendant name**Charges****Prior Complaint (if applicable)****Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case.**February 7, 2018

Date

s/MARK McDONALD

MARK McDONALD

DOJ Tax Attorney

Northern Criminal Enforcement Section

601 D Street N.W. - Room 7544

Washington D.C. 20004

Telephone: (202) 305-2672

Email: mark.s.mcdonald@usdoj.gov

¹ Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.